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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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DATE: JUL 28 2011

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation established in 2001, states that it is engaged in international trading, investment and consulting. It claims to be a subsidiary of the State Grid Corporation of China. The petitioner has employed the beneficiary as its chairman and chief executive officer since 2003 and now seeks to extend his status for three additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary is engaged in only executive and managerial duties and is in charge of the overall management of the company. Counsel notes that U.S. Citizenship and Immigration Services (USCIS) already approved a previous extension of the beneficiary's L-1A nonimmigrant status and asserts that "the immigration law should not apply differently to his different L-1 extensions." Counsel submits a brief in support of the appeal.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

II. The Issue on Appeal

The primary issue to be addressed is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and

- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 10, 2008. In a letter dated August 29, 2008, the petitioner described the beneficiary's duties as chairman and chief executive officer as follows:

[The beneficiary] was assigned to be in charge of the overall management of the company. In this executive capacity, [the beneficiary] has absolute and discretionary authority and control over the entire domestic and international business operations as well as the authority to recruit and dismiss supervisory personnel. He was tasked to direct and coordinate the overall business operations; prepare, plan and supervise day-to-day operations of [the petitioner]; render work instructions and assignments to subordinates; participate in the management of personnel matters including recruiting and dismissing employees of [the petitioner]; prepare periodic sales reports showing sales volume and potential sales; report to [the parent company] the business operations and other related matters of [the petitioner] in a timely manner.

In the same letter, the petitioner described the U.S. company's business activities as follows:

[The petitioner] mainly engages in electric power operation management, investment, international trade, project contract, scientific and technology research, international conferencing, consulting, training, traveling and business trip services, etc. . . . It introduces advanced electric power technology and equipment to Chinese enterprises, provides training programs of the advanced U.S. management system in power industry, collects the most updated information on world power and energy trends and contributes a lot to the modernization and globalization of [the parent company].

The petitioner submitted an organizational chart for the U.S. company which depicts the beneficiary as president and CEO. The chart shows that he directly supervises a [REDACTED] an employee in the "President Office" department [REDACTED] an employee in the financial department [REDACTED] and an employee in the business development department [REDACTED]. The chart depicts an unstaffed technical department and a vacant vice president position.

The petitioner indicated that [REDACTED] is responsible for preparing financial reports, overseeing accounting, budget preparation and audit functions, and reviewing financial reports to analyze sales, expense and profit projections. According to the job description provided for [REDACTED], she is responsible for: forecasting, tracking and analyzing marketing and sales trends; seeking and providing information to help companies determine their position in the marketplace; measuring the effectiveness of marketing, advertising and

communications programs and strategies; conducting research on consumer opinions and marketing strategies; attending staff conferences to provide management with information and proposals concerning the promotion, distribution, design and pricing of company products and services; gathering and analyzing data on competitors; and monitoring industry statistics and trends.

The petitioner indicated that its financial department employee, [REDACTED], is responsible for preparing, examining and analyzing all financial records, statements and reports; analyzing business operations, trends, costs, revenues and financial commitments to project future revenues and expenses; reporting to management regarding finances; developing, maintaining and analyzing budgets; developing, implementing and documenting recordkeeping and accounting systems; and advising management about issues such as resource utilization, tax strategies and budget forecasts.

Finally, the petitioner stated that [REDACTED] is responsible for answering calls, greeting visitors, ordering and distributing office supplies and performing general office duties,

The director issued a request for additional evidence on December 3, 2008, in which she instructed the petitioner to submit: (1) a more detailed description of the beneficiary's proposed duties, identifying the actual, specific day-to-day tasks to be performed and an estimate of the percentage of time the beneficiary will dedicate to each duty; (2) a detailed organizational chart for the U.S. company, including the names and detailed position descriptions for all employees subordinate to the beneficiary; (3) copies of the petitioner's IRS Form DE-6, Quarterly Wage Report for the last eight quarters; and (4) a list of all of the U.S. company's employees from the date of establishment to the present, including names, job titles, beginning and ending dates of employment, wages per week; and source of remuneration.

In response, the petitioner submitted the following position description for the beneficiary:

In the executive capacity, [the beneficiary] has absolute and discretionary authority to control over the entire domestic and international business operations as well as the authority to recruit and dismiss supervisory personnel and assist to manage the personnel matters. [The beneficiary] spends 30% of his time in directing and coordinating overall business operations, including preparing, planning and supervising day-to-day operations of [the petitioner], 30% of his time in developing marketing strategies and establishing cooperation and alliance in North America Market, 10% of his time in conducting marketing research and analysis, 10% of his time in rendering work instructions and assignments to subordinates, 10% of his time in participating in the management of personnel matters including recruiting and dismissing employees of [the petitioner], 10% of his time in preparing periodic sales reports showing sales volume and potential sales and reporting to the parent company regarding the business operations and other related matters in a timely manner.

The petitioner further stated that the beneficiary directs the company's president office, financial, business development and technical departments, noting that [REDACTED], [REDACTED], [REDACTED] and [REDACTED] work in these departments and assist [the beneficiary] to conduct daily business operations of the U.S.

Subsidiary." The petitioner re-submitted the organizational chart and job descriptions that were provided with the initial filing.

The petitioner also submitted copies of its state quarterly wage reports and federal quarterly tax returns for 2007 and 2008. The records show that only the beneficiary, [REDACTED] and [REDACTED] were on the petitioner's payroll at the time the petition was filed. The petitioner also provided a list of all employees who have worked for the company since 2001. According to this list, [REDACTED] was employed by the company only through March 1, 2007. [REDACTED] is listed as a current employee since December 2006; however, the petitioner indicates her wages, social security number and immigration status as "N/A" and she does not appear to be a paid U.S. employee.

The director denied the petition on January 31, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director observed that the beneficiary's claimed duties are too broad and nonspecific to demonstrate what he actually does as the petitioner's chief executive officer. The director determined that the petitioner did not establish that the beneficiary would be primarily supervising a subordinate staff of professional, managerial or supervisory personnel, or managing an essential function of the organization. The director concluded that, given the company's limited staffing, it is reasonable to conclude that the beneficiary will primarily be performing duties outside the scope of the definitions of managerial and executive capacity.

On appeal, counsel for the petitioner asserts that the petitioner established that the beneficiary will be employed in a managerial and executive position, and emphasizes that the petitioner's two prior petitions on the beneficiary's behalf were approved based on similar evidence. Counsel contends that "the immigration law should not apply differently on his different L-1 extensions," and states that "it will be internally inconsistent in adjudicating [the beneficiary's] L-1A status by different standards."

Discussion

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In addition, the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

As noted by the director, the petitioner's initial description of the beneficiary's duties offered little insight into what he does on a day-to-day basis. For example, the petitioner stated that the beneficiary will be "in charge of the overall management of the company," "have absolute discretionary authority and control over the entire . . . business operations"; "direct and coordinate the overall business operations"; and "supervise day-to-day operations." The petitioner did not indicate how the beneficiary would carry out his responsibilities or what specific tasks he would perform. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In the request for evidence, the director clearly and explicitly instructed the petitioner to provide a detailed and specific description of the beneficiary's duties and the amount of time he will devote to each duty. The position description submitted in response, much like the initial position description, was lacking in specificity. For example, the petitioner indicated that the beneficiary devotes 30% of his time to "directing and coordinating overall business operations" and 30% of his time to "developing marketing strategies and establishing cooperation and alliance in North America Market." Without a delineation of the actual tasks the beneficiary performs in order to "direct" business operations and establish "cooperation and alliance," it cannot be determined that the beneficiary's tasks are primarily managerial or executive in nature. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Furthermore, the time the beneficiary devotes to conducting market research (10%) and preparing sales reports (10%) cannot be considered managerial or executive in nature. Overall, these duties, which amount to 80% of the beneficiary's time, are either excessively vague and nonspecific, or non-qualifying tasks, and thus, the position description does not establish that the beneficiary's duties will be primarily managerial or executive in nature.

In addition, the petitioner has provided inconsistent and contradictory evidence with respect to the company's staffing structure as of the date the petition was filed, which undermines its claim that the beneficiary devotes essentially all of his time to managerial or executive duties and carries out his objectives through subordinate personnel. On September 10, 2008, the petitioner stated on the Form I-129 that it employed a total of five persons. The organizational chart submitted at the time of filing depicts five employees and two or more vacant positions. However, the petitioner's payroll records and Federal and State quarterly tax reports confirm that the petitioner did not employ more than three people at any point between January 2007 and October 2008. Although the evidence shows that [REDACTED] left the company's employ as of March 1, 2007, the petitioner claims that she serves as its business development manager as of September 2008. There is no evidence that the petitioner ever employed [REDACTED] the claimed chief financial officer, and the petitioner's tax returns do not reflect any payments to contractors, officers or other external staff. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA

1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The only confirmed employees are the administrative worker and the accountant, both of who earn only \$1,000 per month, which suggests part-time employment.¹ [REDACTED] prepared the petitioner's tax documentation doing business as [REDACTED] which further supports a finding that he is a part-time employee of the petitioning company. Therefore, an analysis of the nature of the petitioner's business undermines a determination that the petitioner has employees to relieve the beneficiary from performing non-qualifying duties. As noted above, the petitioner states that it "engages in electric power operation management, investment, conferencing, consulting, training, traveling and business trip services." It is evident that the petitioner's accountant and office worker are not providing these types of services, and the petitioner has not documented the employment of any other personnel.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

While the beneficiary has the authority to hire and fire employees, the petitioner has not established that he is primarily engaged in the supervision of a subordinate staff comprised of managerial, professional or supervisory workers. The petitioner has documented the employment of one general office worker and one accounting employee. While the accountant may be considered a professional, it could not be concluded that supervision of this part-time employee is among the beneficiary's primary duties in the United States.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a detailed job description that delineates the tasks to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Here, the petitioner has not articulated a claim that the beneficiary manages an essential function of the U.S. company, nor would the evidence submitted support such a claim. As discussed above, the petitioner has not provided a detailed description of the beneficiary's actual duties, and thus it

¹ One month's full-time wages at California's 2008 minimum wage of \$8.00 would amount to \$1,386.

cannot be concluded that those duties are primarily managerial, and specifically, primarily related to managing an essential function of the U.S. company.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, the petitioner has not established that the beneficiary is employed in an executive capacity, notwithstanding his executive job title. A beneficiary's "control," management or direction over a company cannot be assumed or considered "inherent" to his position merely on the basis of broadly-cast job responsibilities. The petitioner's description of the beneficiary's job duties merely paraphrases the statutory definition of the term "executive capacity" and is insufficient, without more, to establish that he acting as an executive within the context of the operation of the U.S. company. As the petitioner has not documented the existence of any U.S. employees to actually provide the services of the company, it is reasonable to assume that the beneficiary is not relieved from focusing on the day-to-day operations of the enterprise.

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that U.S. Citizenship and Immigration Services (CIS) "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Here, the lack of a subordinate staff to provide the services of the U.S. company brings into question how much of the beneficiary's time can actually be devoted to the claimed managerial or executive duties. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F.

Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The absence of a subordinate staff sufficient to perform the non-qualifying duties of the petitioner's business is a proper consideration in the analysis of the beneficiary's employment capacity. *See Q Data Consulting, Inc. v. INS*, 293 F. Supp. at 29 (holding that the INS' finding that the beneficiary did not work in a primarily managerial or executive capacity was "bolstered by the absence of evidence that a sufficient 'subordinate staff' will 'relieve her from performing non-qualifying duties'").

An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In this matter, the petitioner has not adequately described the nature of the beneficiary's duties or the nature of the petitioner's business, nor has it corroborated the employment of any workers besides the beneficiary and part-time administrative and financial support staff. The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's day-to-day operations and has the appropriate level of authority, the petitioner has failed to demonstrate that his duties would be in a primarily managerial or executive capacity as of the date of filing.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. Prior Approvals and Conclusion

The AAO acknowledges that USCIS previously approved an L-1A nonimmigrant petition filed on behalf of the beneficiary. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of

statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In both the request for evidence and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous petitions were approved based on the same minimal evidence of the beneficiary's eligibility, the approval would constitute gross error on the part of the director.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Further, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The petitioner has not provided evidence or argument for the record that is sufficient to overcome the director's decision.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.